



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

November 2, 2012

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Michael Cronin**
Tax Registry No. 897264
44 Precinct
Disciplinary Case No. 85918/09

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on November 22, 2011 and was charged with the following:

DISCIPLINARY CASE NO. 85918/09

1. Sergeant Michael Cronin, assigned to the 44 Precinct, while on-duty on June 4, 2008, at approximately 0945 hours, while in the vicinity of [REDACTED] did abuse his authority as a member of the New York City Police Department, in that he entered said apartment without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 **ABUSE OF AUTHORITY**

2. Sergeant Michael Cronin, assigned to the 44 Precinct, while on-duty on June 4, 2008, at approximately 0945 hours, while in the vicinity of [REDACTED] having been involved in a police incident, to wit: a police entry to said apartment, did thereafter fail and neglect to make entries in his Activity Log concerning the incident.
P.G. 212-08, Page 1, Paragraph 1 **ACTIVITY LOGS**

In a Memorandum dated February 16, 2012, Assistant Deputy Commissioner Robert W. Vinal found Respondent Cronin Not Guilty of Specification No. 1 and Respondent Pleaded Guilty of Specification No. 2 in Disciplinary Case No. 85918/09. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty. Respondent Cronin shall forfeit two (2) vacation days, regarding this matter.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

February 16, 2012

MEMORANDUM FOR: Police Commissioner

RE: Sergeant Michael Cronin
Tax Registry Number 897264
44 Precinct
Disciplinary Case No. 85918/09

The above-named member of the Department appeared before me on November 22, 2011, charged with the following:

1. Sergeant Michael Cronin, assigned to the 44 Precinct, while on-duty on June 4, 2008, at approximately 0945 hours, while in the vicinity of [REDACTED] did abuse his authority as a member of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

2. Sergeant Michael Cronin, assigned to the 44 Precinct, while on-duty on June 4, 2008, at approximately 0945 hours, while in the vicinity of [REDACTED] having been involved in a police incident, to wit: a police entry to said apartment, did thereafter fail and neglect to make entries in his Activity Log concerning the incident.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

The Department was represented by Nancy Lichtenstein, Esq., Department Advocate's Office, and Respondent was represented by John D'Alessandro, Esq.

¹ This building is located in the Bronx.

Respondent, through his counsel, entered a plea of Guilty to one of the subject charges and a plea of Not Guilty to the remaining charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty of Specification No. 2.
Respondent is found Not Guilty of Specification No. 1.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on June 4, 2008, Respondent was assigned to the 44 Precinct and that he performed a 7 a.m. to 3 p.m. tour of duty that day as the Street Narcotics Enforcement Unit (SNEU) supervisor. His eight-officer SNEU team included Detective George Weir and Police Officers Jeanette Rivera and Colin Higgins. It is further undisputed that Person A was arrested that morning by Weir, assisted by Rivera, at [REDACTED], for possessing crack cocaine. Weir and Rivera radioed for Respondent to respond to the scene to verify the arrest of Person A. Respondent arrived at the scene accompanied by Higgins. Person A requested that she be allowed to drop off packages she was holding at [REDACTED] [REDACTED] which Person A claimed was the residence of her boyfriend. Finally, it is not disputed that at about 0945 hours, Respondent, Weir, Rivera and Higgins escorted Person A into [REDACTED] and then upstairs to the front door of [REDACTED].

The Department's Case

The Department called Joanne Hannah as its only witness.

Joanne Hannah

Hannah, who has resided at [REDACTED], the Bronx, for the past 20 years along with her 21-year-old son, testified that because her son suffers from [REDACTED] he sometimes has "outbursts." She recalled that on "maybe five" occasions prior to June 4, 2008, when her son had outbursts, she had called the police to her apartment to aid her in getting control of her son and they had been helpful to her. Hannah recalled that she has known Person A, who lives downstairs at [REDACTED] [REDACTED] for 15 years. Hannah testified that Person A is a drug addict, that she "used to" try to help Person A "kick her habit," but that after Person A broke into Hannah's mailbox, Hannah had Person A arrested and she obtained an Order of Protection against Person A.

On June 4, 2008, Hannah was inside her bedroom when she heard a knock on her front door. She walked to the front door and asked who was knocking. She heard a voice, which she recognized as Person A's voice, asking her to open the door because she wanted to talk to her. Hannah told Person A to get away from the door. Hannah then told Person A that if she did not move away from the door, Hannah would call the police. Hannah then heard what sounded like "walkie-talkies" in the hallway. Hannah asked Person A, "Did you call the police on me and why?" Person A again asked her to open the door. Hannah then heard "banging" on the door and when she asked, "Who is it?" she heard a voice say, "The Police." Hannah said, "Hold on." She moved away from the

door and “went to get something appropriate to put on.” After she got dressed, she returned to the door. Because she heard more banging, she “got scared” and opened the door.

When she opened the door, she saw two male police officers standing in front of the door. One had dark, curly hair and one had blond hair. She recognized the blond officer as an officer who had come to her apartment at her request after her son had an outburst to aid her in getting control of her son. She agreed that he had been helpful to her. [Respondent stipulated that he was the other male police officer who was standing in front of the door]. Hannah asked them, “What happened?” Respondent asked her, “Do you have a dog?” When she responded, “No,” Respondent “ran” through the doorway into her apartment. The other male officer entered with him. Hannah testified that she never gave either of them permission to enter her apartment. Hannah asserted that Respondent started “looking around throughout the whole apartment” and “yelling” at her, “Where’s your son?” She told him that her son was at school. Respondent remained inside her apartment for about ten minutes. Hannah saw Person A standing outside her door but Person A never entered the apartment. Hannah has not filed any civil lawsuit regarding this incident.

On cross-examination, Hannah agreed that the officer at her door who she had recognized as an officer whom she had invited into her apartment on an occasion when her son had had an outburst had been more than just helpful, he was also very kind to her and her son. Hannah confirmed that she learned that Person A had told the officers that [REDACTED] was her residence. Hannah testified that because she was upset that day,

she could not recall whether the officer she recognized had told her that he had come up to her apartment that day because he was concerned about her.

Hannah denied that when she saw Person A standing at her front door she had screamed at Person A. Hannah was confronted with a statement she made to investigators at the Civilian Complaint Review Board (CCRB) that she had told Person A, "Get the fuck away from my door you crack head!" Hannah denied that she had made this statement. Hannah agreed that she was angry at Person A when she heard Person A's voice at her door but Hannah denied that she had been angry at the police officers for bringing Person A to her door. Hannah was confronted with a statement she made to investigators at CCRB that three male police officers, not two, had entered and searched her apartment. Hannah responded that she had no recollection of having said that. Hannah then testified that a total of four officers had entered her apartment because two female officers also entered and that they looked around along with with the two male officers. Another officer was with Person A in the hallway outside the apartment.

Respondent's Case

Respondent called Detective George Weir and Police Officers Jeanette Rivera and Colin Higgins as witnesses and testified in his own behalf.

Detective George Weir

Weir, assigned to the 44 Precinct, testified that after he and Rivera arrested Person A for possessing crack cocaine, they radioed for Respondent to respond to [REDACTED] [REDACTED] to verify their arrest. After Respondent arrived

with Higgins, Person A stated that she wanted to drop off food and coffee she was carrying at her boyfriend's residence at [REDACTED]. They knocked on the front door of [REDACTED]. A heavy-set black woman opened the door. She became irate and began screaming and cursing at Person A. Weir asserted that the officers became concerned that the woman might attack Person A. The woman told the officers that they could "come inside" the apartment.

On cross-examination, Weir agreed that in response to their inquiries about Person A's boyfriend, the woman who opened the door told them that "he does not live here." Weir asserted that because of their concern that the woman might attack Person A, Rivera moved Person A away from the door and down the hallway. Weir asserted that he did not see Respondent walk into the apartment.

Police Officer Jeanette Rivera

Rivera, assigned to the 44 Precinct, testified that after she and Weir arrested Person A for possessing crack cocaine and after Respondent responded to verify their arrest, they all escorted Person A to [REDACTED]. The woman who opened the door began screaming at Person A "I told you not to come here," and called Person A "a bitch" and a "fucking crack head." Rivera testified that she was the only female officer present at the door to [REDACTED] and that she did not enter the apartment.

On cross-examination, she agreed that the woman who opened the door told them that "he's not fucking here," and that Respondent and Higgins passed through the doorway.

Police Officer Colin Higgins

Higgins, assigned to the 44 Precinct, testified that after he and Respondent arrived at the arrest scene, he heard Person A state that her boyfriend had a large quantity of drugs and that she wanted to drop off some property she was carrying at her boyfriend's apartment. When Person A led them to the door of [REDACTED] Higgins realized that he had responded to [REDACTED] on previous occasions. When a woman opened the door to [REDACTED] he recognized her as "Miss Hannah" because Higgins had previously been called there to help "Miss Hannah" with her son. Higgins testified that when "Miss Hannah" saw that Person A was standing at her door, she commenced a screaming match with Person A during which she called Person A a "bitch" and other names. Higgins testified that because "we needed to separate the two of them from the hallway," he "asked Miss Hannah if we can step inside and speak to her." She responded "Yes." Higgins recalled that he and Respondent only stepped inside the doorway into the foyer area of the apartment. He and Respondent did not go further into the apartment and they did not search the apartment. After they spoke to Hannah about her son for a couple of minutes, she calmed down and they then left.

On cross-examination, Higgins confirmed that he had responded to [REDACTED] before to help "Miss Hannah" with her son and that they had a good relationship. Higgins denied that he and Respondent had stepped through the doorway into the apartment immediately after Hannah opened the door. Higgins confirmed that Person A had made a comment to the officers about drug use by her boyfriend.

Respondent

Respondent testified that after Hannah had filed her complaint against him with CCRB, he was offered a Command Discipline (CD) carrying a two-day penalty to dispose of this CCRB complaint. He refused to sign this CD.

He recalled that on June 4, 2008, he was with Higgins in their Department vehicle when Weir and Rivera radioed for him to respond to [REDACTED], the Bronx, to verify their arrest of Person A for possession of crack cocaine. After Respondent arrived at the arrest scene with Higgins, Person A stated that her boyfriend had "a lot" of drugs and that she wanted to drop off some things she was carrying at her boyfriend's apartment where she also lived. Person A led them to [REDACTED]

[REDACTED] Respondent testified that Hannah responded to their knocks on the front door by opening the door and that after Hannah had made a hand gesture with her palm open indicating that they could come inside, he stepped into the foyer of the apartment. Respondent testified that Hannah was polite to them, that she never asked them to leave and they did not search the apartment.

With regard to his failure to make an entry in his Activity Log, Respondent testified that at the 44 Precinct during 2008 making an entry in the SNEU Log was considered sufficient documentation of any action taken in the field. He insured that Person A's arrest was entered in the SNEU Log [Respondent's Exhibit (RX) A] and that Person A's arrest was also entered in the "Precinct SNEU Daily Activity Recapitulation" (RX B). Respondent explained that since he and the officers under his supervision had gone to [REDACTED] at Person A's request, he considered their visit to [REDACTED] as contiguous with Person A's arrest.

On cross-examination, Respondent agreed that Hannah did not verbally tell him that he could come into her apartment. Respondent also agreed that neither the SNEU Log entries for June 4, 2008 (RX A) nor the "Precinct SNEU Daily Activity Recapitulation" for June 4, 2008 (RX B) contains Hannah's name or the address [REDACTED].

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that Respondent entered Hannah's apartment on June 4, 2008 without sufficient legal authority.

Most of the facts regarding Respondent's interaction with Hannah on June 4, 2008, are not in dispute. In her opening statement, the Assistant Department Advocate (the Advocate) indicated that the Department was not contesting Respondent's claim that he, Weir, Rivera and Higgins went to [REDACTED] after Person A, who had just been arrested for Criminal Possession of a Controlled Substance, had requested to be allowed to drop off non-contraband items that she possessed at the time of her arrest at her boyfriend's apartment and that Person A had led the officers to [REDACTED].

Respondent does not dispute that he entered [REDACTED]. Respondent asserted that he had sufficient legal authority to enter Hannah's apartment because he had a good faith belief that Hannah had consented to his entry. However, Hannah testified that she did not give Respondent or any of the officers with him permission to enter [REDACTED] on June 4, 2008.

I would initially note that this case presents a somewhat unusual situation. Most improper entry allegations made by civilians against members of the service involve a scenario in which members are accused of having entered a residence that members have never been invited to enter on a previous occasion. Here, however, Hannah testified that because she often has problems with her son (who suffers from [REDACTED]), on as many as five occasions prior to June 4, 2008, she had requested that police respond to her residence and that on each occasion she had asked the officers to enter her apartment to assist her in dealing with her son.

Most significantly, Hannah corroborated Higgins' testimony that he was one of the officers who had responded to her residence to provide police assistance regarding her son. Thus, it is not disputed that the officer who was standing with Respondent at the threshold of Hannah's front door on June 4, 2008, had previously been invited by Hannah to come inside her residence and that Hannah had found this officer to have been helpful and very kind to her and her son.

As the Advocate correctly argued, the fact that Higgins had been invited by Hannah to enter her residence on a previous occasion did not provide any ongoing authorization to enter on June 4, 2008. However, the undisputed fact that Hannah had not only not objected but had in fact requested that Higgins and other officers enter her apartment on previous occasions lends credence to Higgins' claim that she verbally approved his entry into her apartment on June 4, 2008, and if Higgins received her permission to enter, Respondent had the right to enter with him.

The Department's proof that Respondent entered Hannah's residence without her permission consisted solely of Hannah's trial testimony. The record reflects that the

accuracy of her present recollection of this brief event (which took place three and one half years prior to her testimony at this trial) is questionable and that the believability of her trial testimony regarding her reaction to seeing Person A at her door is also open to question because her trial testimony is inconsistent with statements she made to CCRB investigators.

With regard to the accuracy of her present recollection, at this trial Hannah asserted that four police officers, two male and two female, entered her apartment. When Hannah was confronted with a statement she made to investigators at CCRB that three police officers had entered her apartment, Hannah testified that she had no recollection of having said that. Hannah then testified that two of the officers who had entered her apartment were females. The Department offered no evidence that any female officer other than Rivera was in the group of officers who were led by Person A to [REDACTED].

With regard to the believability of her testimony regarding her reaction to seeing Person A at her door, at this trial Hannah denied that she had screamed at Person A. This testimony is inconsistent with Hannah's statement to CCRB that when she saw Person A at her door she had yelled at her, "Get the fuck away from my door you crack head!" Also, this statement and Hannah's admission at this trial that she was angry to find Person A at her door show that Hannah had a motive to make a complainant against the officers. Hannah's claim in her trial testimony that she was not angry at the officers for having brought Person A to her door is belied by her admission at CCRB that she had a violent reaction to the officers' action of bringing Person A to her doorstep.

Based on these inconsistencies, I find that Hannah's testimony, standing alone without support, does not constitute credible evidence sufficient to support a guilty finding.

Since I find that the Department did not meet its burden of proving this charge by a preponderance of the credible evidence, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

It is charged that Respondent failed and neglected to make entries in his Activity Log concerning his June 8, 2008 interaction with Hannah.

Respondent, having pleaded Guilty, is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

The Respondent was appointed on October 15, 1990. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded guilty and admitted that he neglected to make entries in his Activity Log concerning his interaction with Hannah at [REDACTED] and his entry into that apartment.

With regard to Respondent's mitigation testimony, even if I credit Respondent's claim that at the 44 Precinct during 2008 making an entry in the SNEU Log (RX A) was

considered sufficient documentation of any action taken in the field, Respondent was aware that Person A's arrest by Weir took place at [REDACTED]. Since only the arrest location is entered in the SNEU Log and in the "Precinct SNEU Daily Activity Recapitulation" (RX B), Respondent was aware that unless he made an entry in his Activity Log concerning his interaction with Hannah at [REDACTED] [REDACTED] this interaction, because it would not be recorded in any other Department record, would be undocumented.

The Advocate made no penalty recommendation at this trial but at a pre-trial conference the Advocate recommended that Respondent forfeit five vacation days as a penalty. However, that penalty was offered to cover both of the Specifications charged here and I have found Respondent Not Guilty of Specification No. 1.

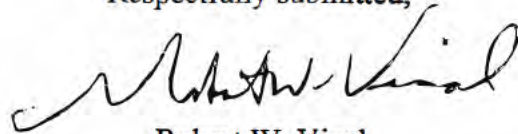
In formulating a penalty recommendation, I have also taken into consideration Respondent's outstanding performance evaluations and his impressive Department Recognition Summary.

In a case whose facts are similar to those presented here, *Disciplinary Case No. 84900/09*, a ten year detective with no prior disciplinary record pleaded guilty to failing to make a sufficient Activity Log entry regarding an encounter with a civilian. In that case, the Trial Commissioner recommended that the penalty to be imposed consist of a Reprimand. This penalty was disapproved by the Police Commissioner who substituted a penalty under which the Specification would be dismissed and the detective would be issued a Schedule "B" CD for failing to properly maintain his Activity Log. See *Police Commissioner's Memorandum* dated May 13, 2010.

Here, however, Respondent testified that when he was offered a CD (which carried a two-day penalty) to dispose of Hannah's CCRB complaint, he refused to sign this CD.

Therefore, I recommend that Respondent's penalty consist of a Reprimand.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

